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DEPT. OF PLANNING
AND PERMITTING
CITY AND COUNTY OF HONOLULU

Attorneys for Intervenors
KO OLINA COMMUNITY ASSOCIATION
and MAILE SHIMABUKURO

BEFORE THE PLANNING COMMISSION
OF THE CITY AND COUNTY OF HONOLULU
STATE OF HAWAII

In the Matter of the Application of

DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU

To delete Condition No. 14 of Special
Use Permit No. 2008/SUP-2 (also
referred to as Land Use Commission
Docket No. SP09-403) which states as
follows:

“14. Municipal solid waste shall be
allowed at the WGS� up to July 31,
2012, provided that only ash and residue
from H-POWER shall be allowed at the
WGS� after July 31, 2012.”

FILE NO. 2008/SUP-2

**INTERVENORS KO OLINA
COMMUNITY ASSOCIATION AND
MAILE SHIMABUKURO'S
RESPONSE TO DEPARTMENT OF
ENVIRONMENTAL SERVICE,
CITY AND COUNTY OF
HONOLULU'S PROPOSED
FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECISION AND ORDER**

CERTIFICATE OF SERVICE

Contested Case Beginning:
December 7, 2011

KOCA 34

**INTERVENORS KO OLINA COMMUNITY ASSOCIATION
AND MAILE SHIMABUKURO'S RESPONSE TO DEPARTMENT
OF ENVIRONMENTAL SERVICE, CITY AND COUNTY OF
HONOLULU'S PROPOSED FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND DECISION AND ORDER**

Pursuant to Honolulu Planning Commission Rule § 2-74, Intervenor Ko Olina Community Association (“**Association**”) and Maile Shimabukuro (“**Senator Shimabukuro**”) and together with the Association, “**KOCA**”) submit this response to Applicant Honolulu Department of Environmental Services’ (“**ENV**”) Proposed Findings of Fact, Conclusions of Law, and Decision and Order filed May 2, 2012 (“**ENV’s Proposed Findings**”).

I. INTRODUCTION

The ENV and Schnitzer Steel Hawaii Corp. (“**Schnitzer**”) concede that the Waimanalo Gulch Sanitary Landfill (“**Landfill**” or “**WGSL**”) should close to most forms of waste by January 2, 2014. ENV’s Proposed Findings at 33 (¶¶ 1–3). While this concession is a significant step in the right direction, the record establishes that further conditions are necessary and appropriate.

The ENV claims to want “maximum diversion” from the Landfill. *See* 1/11/12 Tr. at 157:23–25 (Steinberger: “You know what, again -- and I’ll say it again, what I would like to see is as much waste diverted from that facility as possible.”); 4/11/12 Tr. at 94:7–9 (Steinberger: “I think I’ve indicated that the name of the game for us is diversion, maximum diversion.”). By January 1, 2013, the third boiler will be operational. 4/11/12 Tr. at 176:7–10, 211:12–15 (Steinberger). There is no basis for sending combustible waste to the WGSL after this date. The third boiler will have

the capability to burn all putrescible wastes, including all sewage sludge, medical waste, and food waste. 1/11/12 Tr. at 71:7–10, 75:13–22, 90:3–20, 114:25–115:5, 123:23–24, 174:1–6, 203:25 (Steinberger); 4/11/12 Tr. at 163:12–16, 171:16–172:10, 196:20–24 (Steinberger). The Landfill must close to these wastes as soon as possible, which means January 2, 2013. As proposed by KOCA in its Proposed Findings of Fact, Conclusions of Law, and Decision and Order (“**KOCA’s Proposed Findings**”), beginning January 2, 2013, the ENV must end the practice of landfilling putrescible and all other combustible municipal solid waste (“**MSW**”) at the WGSL, except (a) during times when H-POWER is down for maintenance and cannot accept waste or (b) when the Governor declares an emergency.

Furthermore, neither the ENV nor Schnitzer has challenged the current condition that the ENV must act with reasonable diligence to identify and develop a new landfill. *See* Ex. K15 at 6 (¶ 4) (10/22/09 LUC order). Dwight Miller, who was the only witness accepted as an expert in landfill siting, explained that a landfill may be sited and developed in three to five years. 3/7/12 Tr. at 17:25–19:25, 199:24–201:24 (Miller). Mr. Miller’s estimate is consistent with the estimate provided in 2003 by then-acting ENV Director Frank Doyle. Ex. K85 at 95:6–8, 100:23–25 (3/27/03 Tr.: Doyle). The only witnesses who testified that the process could take longer than five years were neither qualified nor experienced in landfill siting. 4/4/12 Tr. at 61:16–25 (Marsters); 4/11/12 Tr. at 41:10–15, 5:22–23 (Sharma); 4/11/12 Tr. at 122:25 (Steinberger). By November 1, 2017, the ENV will have had

seven years to identify and develop a new landfill. The record does not support giving the ENV a day longer to accomplish the task.

Relatedly, the Planning Commission and Land Use Commission must exercise greater oversight of the site-selection process and the ENV's compliance with other conditions. KOCA's Proposed Findings provide for bi-annual reports to the Planning Commission and the Land Use Commission. KOCA's Proposed Findings also provide for the submission of a closure report one-year before the scheduled closure of the Landfill. With these reports, the regulatory bodies will be able to ensure that the ENV diligently develops a new site and complies with the other conditions.

When the new site is developed, the WGSL must close. The ENV has stated that it only wants one landfill to accept all waste streams that require landfilling. 4/4/12 Tr. at 72:13–24 (Marsters); Ex. K27 at 2 (1/20/11 SSC group memory). With a new site developed by November 1, 2017, the ENV will no longer need the WGSL. At that point, after having endured the Landfill's problems for decades, it will be in the best interests of the community for the WGSL to close.

In an attempt to avoid the conditions compelled by the record, the ENV's Proposed Findings largely repeat the Written Direct Testimony of Director Timothy E. Steinberger (“**Director Steinberger**”). Recall that Director Steinberger's written testimony was composed partially by him and partially by the ENV's attorneys. 1/11/12 Tr. at 27:9–15 (Steinberger). After Director Steinberger submitted this combined testimony and argument on December 13, 2011, the Commission heard from 15 witnesses and admitted more than 260 exhibits into evidence. The ENV

generally ignores this evidence. Because the ENV discards the record in favor of the narrative that its counsel developed, the ENV's findings suffer from misstatements, incompleteness and misleading inferences.

In contrast, KOCA's Proposed Findings reflect the full record developed in this case over nine hearing days and express the legal conclusions that necessarily follow from the facts. The Commission should adopt KOCA's Proposed Findings, including the conditions stated in the order.

II. UNOBJECTIONABLE FINDINGS OF FACT

KOCA does not object to, and would incorporate into its own proposed findings of fact, **Findings of Fact 1, 3, 8, 11 and 21**.

In part, KOCA does not object to, and would incorporate the unobjectionable part into its own proposed findings of fact, the following Findings of Fact:

Findings of Fact 7, 13, 14, 15, 16, 17, 18, 19, and 20 only as to the location of the hearing.

Finding of Fact 18 only as to the statement, "The parties agreed to take the remaining witnesses out of order due to scheduling difficulties."

Finding of Fact 32 only as to the statement, "The City Council received an extension of the June 1, 2004 deadline from the LUC."

III. OBJECTIONS TO THE ENV'S FINDINGS OF FACT

KOCA objects to specific paragraphs in the ENV's Findings of Fact for the reasons stated below. The objections are organized according to the sections and subsections used in ENV's Findings.

A. Procedural Matters

Finding of Fact 4 states, “On September 19, 2011, Ko Olina Community Association (‘KOCA’) and Maile Shimabukuro (collectively, ‘Intervenors’) filed a Motion to Recognize Ko Olina Community Association and Maile Shimabukuro as Parties.” The finding is incorrect. The motion was filed on September 15, 2011.

Finding of Fact 5 states, “On September 19, 2011, Schnitzer Steel Hawaii Corps. (‘Intervenor Schnitzer’) filed a Petition to Intervene.” The finding is incorrect. The petition was filed on September 15, 2011.

Finding of Fact 14 is materially incomplete because it fails to acknowledge that Exhibit K162 was admitted into evidence without objection during the January 11, 2012 hearing. 1/11/12 Tr. at 96:2–4.

Finding of Fact 15 is materially incomplete because it fails to state that Exhibits K166, K167 and K169 were admitted into evidence without objection during the January 25, 2012 hearing. 1/25/12 Tr. at 51:8–13, 85:22–86:5. Moreover, the supporting citation should read “Tr. 01/25/12” and not “Id.”

Finding of Fact 17 states in part that Dwight Miller was accepted “as an expert in solid waste management.” The finding is materially incomplete. Mr. Miller was accepted, without objection, as an expert in “solid waste management, including landfill siting and design and comprehensive solid waste management.” 3/7/12 Tr. at 18:8–10.

Finding of Fact 18 is materially incomplete because it fails to state that Exhibits K191, K194, K208, K222, K226, and K227 were admitted into evidence without objection during the April 4, 2012 hearing. 4/4/12 Tr. at 15:18–22 (Ex. K227), 18:24–

19:4 (Ex. K191), 19:5–19 (Ex. K222), 23:25–24:16 (Ex. K194), 168:22–169:5 (Ex. K208), 122:20–25 (Ex. K226).

Finding of Fact 19 contains a citation error. The citation should read “Id. at 191:19-24” and not “Id. at 19-24.”

Finding of Fact 20 contains a citation error. The finding should cite to the April 23, 2012 transcript at “47:18-48:23” and not the April 23, 2012 transcript at “80:21-25.”

B. Exhibits

Finding of Fact 25 states in part that Schnitzer’s Exhibits S1 through S4 were received into the record. The finding is false. None of Schntizer’s exhibits were offered or received into evidence.

Finding of Fact 26 states in part, “[T]he Planning Commission received into the record, Exhibits ‘K1’ to ‘K169,’ over objection of Applicant and Intervenor Schnitzer.” This finding is partially false. As to KOCA’s Exhibits K1 to K161, (a) Schnitzer did not object to the admission of those exhibits, 1/11/12 Tr. at 15:12–18; and (b) the ENV did “not object to entry of the exhibits that are referenced in the written testimony of KOCA and Shimabukuro’s witnesses,” 1/11/12 Tr. at 16:1–3. Moreover, KOCA’s Exhibits K162 to K169 were admitted into evidence without objection. 4/11/12 Tr. at 95:23–96:13 (Ex. K162); 1/25/12 Tr. at 6:1–12 (Ex. K163), 38:13–20 (Exs. K164 & K165), 51:8–13 (Exs. K166 & K167), 55:10–16 (Ex. K168), 85:22–86:5 (Ex. K169). Accordingly, only the ENV objected and only as to an unspecified portion of the Exhibits marked K1–K161.

Finding of Fact 27 is potentially false in stating that KOCA's Exhibits K259 and K260 "have not been received into the record by the Planning Commission." If the Planning Commission grants KOCA's motion to reopen filed April 27, 2012, this aspect of Finding of Fact 27 will be false.

C. Relevant History

Finding of Fact 30 states in part, "At that time, ENV anticipated that the Landfill with the expanded 21 acres would reach capacity in 5 years, so the Planning Commission recommended that ENV submit an alternative landfill site, or sites, to the City Council by December 31, 2003, and close WGSL no later than May 1, 2008." The finding is false.

The ENV originally proposed the Landfill be expanded by 60 acres and extended "for another fifteen years." Ex. K85 at 96:18–20 (3/27/03 Tr.: Doyle). Based on opposition from the community, however, the ENV committed to a five-year extension followed by the closure of the landfill. In the 2003 special use permit ("SUP") proceedings before the Land Use Commission, Former Acting ENV Director Frank Doyle explained, "[W]e had originally thought that we would have this landfill operate for another 15 years [to 2008]. And then as part of our discussions with the community and in trying to take a look at their concerns it was reduced to a five-year operation." Ex. K85 at 96:18–22 (3/27/03 Tr.: Doyle). Director Doyle repeatedly expressed the ENV's "commitment" to close the Landfill in 2008. Ex. K85 at 125:7–11, 128:2–5, 145:21–146:2 (3/27/03 Tr.). Consistent with the compromise made with the ENV, the community made no request for intervention and no contested case hearing was held. *See* Ex. K2 (6/9/03 LUC order). In the current contested case

proceedings, Director Steinberger confirmed that “it was a compromise with the community that drove the five-year deadline” 1/11/12 Tr. at 32:3–7 (Steinberger).

Finding of Fact 32 states in part that the City Council “selected” the WGS� as the “new” landfill. The statement is false. City Council passed a non-binding resolution to designating the existing site as the “new” landfill. 1/11/12 Tr. at 52:6–15 (Steinberger); 4/4/12 Tr. at 138:23–139:1 (Timson). The resolution was not binding on the City. *Wemple v. Dahman*, 103 Hawai‘i 385, 396 n.13, 83 P.3d 100, 111 n.13 (2004) (“We also note that County Council Resolution No. 81-252 is a resolution, not an ordinance, and therefore does not have the binding effect of an ordinance”).

Finding of Fact 41 states in part, “[T]he Planning Commission concluded that [t]he term or the length of the new SUP shall be until the Waimanalo Gulch landfill reaches its capacity as compared to a definite time period of “X” number of years.’ See Ex. ‘A17’ at pg. 2.” This finding is false. The Planning Commission did not make such a finding. The quoted statement was made by a single Commissioner during a hearing in the 2009 SUP proceedings. Ex. A17 at 2 (7/31/09 HPC Tr.: Komatsubara).

Finding of Fact 42 is irrelevant. This finding discusses the circumstances in the 2009 contested case proceeding. Circumstances have changed. For example, in the current contested case proceeding, the Commission learned that the Landfill has more regulatory violations than any landfill in the state. These violations include the release of unknown amounts of waste into the environment in 2010 and

2011. The EPA cited Waste Management of Hawaii, Inc. and the ENV for the releases, and the DOH is considering enforcement action.

In the current contested case proceeding, the Commission learned that H-POWER's third boiler will be operational by October or November of 2012 and that the boiler will be able to accept all putrescible wastes, including all sewage sludge, medical waste, and food waste, that presently go to the Landfill.

And in the current contested case proceeding, the Commission learned that by November 1, 2017, the ENV will have been given ample time to site and develop a new landfill for can all forms of waste.

Finding of Fact 43 is materially incomplete. In discussing Condition 1 of the Planning Commission's August 4, 2009 Findings of Fact, Conclusions of Law, and Decision and Order, the finding states, "On or before November 1, 2010, the Applicant shall begin to identify and develop one or more new landfill sites that shall either replace or supplement the WGSL." The finding fails to acknowledge that Condition 1 further states, "The Applicant's effort to identify and develop such sites shall be performed with *reasonable diligence*" Ex. A18 at 25 (§ 1) (emphasis added). Whether the ENV has acted with reasonable diligence is a material issue in the contested case proceeding.

Finding of Fact 44 states, "The City has complied and continues to comply with not only the letter, but the spirit of the Planning Commission's conditions." The record does not support this finding. As explained in KOCA's Proposed Findings, the ENV has not complied with Condition 1 in the Planning Commission's

2009 order. Ex. A18 at 25 (¶ 1) (8/4/09 HPC order). In addition, Commissioner Dawson has expressed frustration that “there has been no report from this site selection committee. We’ve asked and asked for it and have gotten very vague answers, but no clear ones.” 3/7/12 Tr. at 190:20–23 (Dawson). Finally, the record contains no evidence regarding the ENV’s compliance with the “spirit” of any of the conditions. The ENV has the burden of proof. HRS § 91-10(5). Its failure to submit evidence means the matter was not proved. *See* 29 Am. Jur. Evidence § 171 (noting that the burden of proof requires a party to “come forward with evidence”).

Finding of Fact 45 states in part that the Land Use Commission “[d]isregard[ed] the Planning Commission’s reasoned analysis and the underlying facts [in imposing Condition 14].” The finding is false. The Land Use Commission adopted the Planning Commission’s findings of fact, conclusions of law, and decision and order, with modifications and subject to an additional condition of closure.

D. Purpose and Need

Findings of Fact 47–52 state in part that the “WGSL” is necessary. The findings are false. While the continued availability of a landfill is necessary for a limited number of wastes, the landfill does need not be the WGSL. On the contrary, the ENV is compelled to develop a new landfill with reasonable diligence. Ex. K15 at 6 (10/22/09 LUC order). The ENV has not contested that condition.

In addition, **Finding of Fact 47** states, “WGSL is the only landfill option for disposal of MSW for the general public and the only permitted repository for ash produced by H-POWER. Tr. 1/25/12, 58:22-25, 59:1-9.” The cited portion of the record does not support the reference to ash produced by H-POWER.

Finding of Fact 48 contains two errors. First, the citation to “Tr. 4/11/12, 117:13-25” contains a misstatement of Mr. Miller’s testimony by the ENV’s counsel. The statement by counsel is not evidence. Second, the citation to “Tr. 1/25/12, 4:14” references an index page. The page contains no testimony.

Finding of Fact 53 is misleading and materially incomplete. First, Finding of Fact 53 states, “In Calendar Year 2010, approximately 1,214,904 tons of waste was generated on O’ahu.” This finding is false. The total waste generated on Oahu in Calendar Year 2010 was 1,510,593 tons. Ex. A27 (Oahu MSW waste stream). Of the 1,510,593 tons of waste generated, approximately 1,214,904 tons constituted municipal solid waste.

Second, Finding of Fact 53 states, “In FY09 the landfill received approximately 233,065 tons of MSW and in FY10 some 178,512 tons of MSW. . . . See Exhibit ‘A27,’ see also Exhibit ‘A29.’” The statements and supporting citations are incorrect. First, Exhibit A29 provides a “Sustainable Solid Waste Management Ladder for the US” and does not disclose the amount of waste disposed at the Landfill in Fiscal Year 2009. Second, Exhibit A27 discusses the “Municipal Solid Waste Stream on Oahu” for the “CALENDAR YEAR” and not for the Fiscal Year. Finally, Exhibit A27 shows that the Landfill received 233,065 tons of MSW in Calendar Year 2008, 178,512 tons of MSW in Calendar Year 2009 and 163,736 tons of MSW in Calendar Year 2010.

Lastly, Finding of Fact 53 states in part that the figures “reflect a decrease since 2009.” This statement misleadingly implies that the ENV’s waste diversion efforts

improved from 2009 to 2010, which in turn led to a reduction in landfilling. In fact, the decrease in landfilling was caused by a reduction in the total MSW generated on O'ahu. MSW generation decreased from Calendar Year 2008 (1,313,253 tons) to Calendar Year 2009 (1,225,902 tons) and Calendar Year 2010 (1,214,904). Ex. A27. The reduction in waste generation reflects a slowing economy. Ex. K91 at 3 (7/10 ENV status report: "The downward trend [in Landfill disposal] may be attributed to diversion of MSW to the off-island shipping project, the slowing economy, and the expansion of the City's curbside recycling program.").

Finding of Fact 54 states in part that "[o]ther items . . . cannot be recycled or burned at H-POWER." The finding is partially false and materially incomplete. First, Finding of Fact 54 does not identify the period to which it applies. There is a material difference between the waste that can presently be accepted at H-POWER and the waste that can be accepted at H-POWER after the third boiler is operational in October or November 2012. The two existing boilers are refuse-derived fuel ("RDF") units. For these units, the RDF goes into a holding barn where the material, the residue, and any recyclable material is separated. 1/11/12 Tr. at 66:1-4 (Steinberger). This pre-preparation requires worker handling of the waste. 1/11/12 Tr. at 66:18-22 (Steinberger). Worker handling of the waste has been proffered as the reason the ENV and Covanta, the H-POWER operator, have been reluctant to take sewage sludge and medical waste in the past. 4/11/12 Tr. at 170:22-171:10 (Steinberger). The third boiler is a mass burn unit. 1/11/12 Tr. at 65:9-10 (Steinberger). As a mass burn unit, the third boiler will be able to accept significantly

larger material and will require significantly less pre-preparation of waste. 1/11/12 Tr. at 66:8–10 (Steinberger). With less pre-preparation, there will be less worker interaction with the waste. 1/11/12 Tr. at 66:18–21 (Steinberger).

Second, Finding of Fact 54 fails to disclose that H-POWER's third boiler will be operational in October or November 2012. 4/11/12 Tr. at 176:7–10, 211:12–15 (Steinberger). The third boiler will have the capacity to accept all of the sewage sludge that presently goes to the Landfill. Steinberger Written Direct Testimony at 23 (¶ 71); 4/11/12 Tr. at 90:3–21, 174:1–6 (Steinberger). The ENV has offered no evidence that the third boiler will be unable to accept small to medium sized animals, as opposed to large animals. With the third boiler operational, the wastes that cannot be burned at H-POWER are “probably a small percentage” of the total MSW, 1/11/12 Tr. at 77:7–13 (Steinberger), and some of that waste, including contaminated soil, can alternatively be accepted at the PVT Landfill, 1/25/12 Tr. at 12:2–3 (Chang).

Finally, Finding of Fact 54 is unsupported by the evidence cited in the finding. The finding relies on “Tr. 1/25/12, 4:14.” Page four of the January 25, 2012 transcript is the index page. It contains no testimony. The citation to “Tr. 4/11/12, 117:13-25” contains a misstatement of Mr. Miller's testimony by the ENV's counsel. The statement by counsel is not evidence.

Finding of Fact 55 states in part that the third boiler at H-POWER “will be operational by 2013.” The finding is misleading. During the April 11, 2012 hearing, Director Steinberger admitted that the third boiler, with its 300,000 tons of addi-

tional capacity, will be operational by October or November 2012. 4/11/12 Tr. at 84:22–24, 176:7–10, 211:12–15 (Steinberger).

Finding of Fact 58 states in part that the City has a digester at Sand Island and that the City is pursuing alternative technologies for sewage sludge. The finding is materially incomplete. In particular, the finding does not acknowledge that the City is far behind other municipalities in non-incinerator diversion, especially with respect to biosolids. 4/4/12 Tr. Supp. at 12:5–6 (Gill); Ex. K189 at 1 (Los Angeles biosolids webpage); Ex. K190 at 2 (King County biosolids webpage); Ex. K148 at 10 (Parametrix alternatives memorandum); 3/7/12 Tr. at 22:18–20, 96:4–7, 98:17–22, 139:11–140:4 (Miller). Nor does the finding disclose that although the ENV pursued a second digester at Sand Island, the City Council did not consider the digester to be a priority. 4/11/12 Tr. at 179:6–11 (Steinberger).

Finding of Fact 59 states in part, “By 2013, when H-POWER's third boiler is expected to be operational, the City through its various solid waste management programs expects to divert eighty (80) percent of the waste stream, with the remaining twenty (20) percent being landfilled at WGS�. Testimony of Timothy E. Steinberger, p. 30.” This finding is inconsistent with the evidence cited in the finding and is partially false. First, Page 30 the Director Steinberger's Written Direct Testimony states, “By 2012, when HPOWER's third boiler is expected to be fully operational” Further, as discussed above, Director Steinberger testified at the April 11, 2012 hearing that the third boiler will be operational by October or November 2012. 4/11/12 Tr. at 176:7–10, 211:12–15 (Steinberger).

Second, the ENV has publicly stated that when the third boiler is operational, the landfill diversion will be 90%. Ex. K251 at 1–2 (5/5/11 ENV press release).

Finding of Fact 60 states, “It will take at least seven years from site selection for a new landfill site to be operational.” The finding is false. There is no credible evidence to support the ENV’s statement that it will take at least seven years from site selection. Ex. K12 at 8 (¶ 34) (8/4/09 HPC order). The ENV’s estimates keep increasing. In 2003, the ENV admitted it would only take three to five years to identify and develop a new landfill. Ex. K85 at 95:6–8, 100:23–25 (3/27/03 Tr.: Doyle).

In 2009, the ENV asserted that it would take seven years to identify and develop a new site. Ex. K12 at 8 (¶ 34) (8/4/09 HPC order).

Now, the ENV claims it will take more than seven years *after* site selection. *E.g.*, 4/11/12 Tr. at 122:25 (Steinberger).

Consistent with the ENV’s admission in 2003, Mr. Miller testified that it would take three to five years to identify and develop a landfill. Mr. Miller was the only expert in landfill siting to testify in this proceeding. He explained, “[I]f you’re putting out a number of seven years, it’s somewhat of a self-fulfilling prophecy. If you’re saying, Oh God, it’s going to take us seven years, that’s how long it’s going to take you.” 3/7/12 Tr. at 202:20–24 (Miller). But if the ENV is willing to “put out” and “push a schedule,” the timetable will be shorter. 3/7/12 Tr. at 202:24–203:1 (Miller). The ENV represents that it is “committed” to finding a new site. *See* Ex. K85 at

125:7–11, 128:2–5, 145:21–146:2 (3/27/03 Tr.: Doyle). If the ENV’s representations are true, no more than five years is necessary to develop a new site.

Finding of Fact 61 admits that further “progress” in waste diversion is needed. This statement is true. But the finding is materially incomplete. First, the City is far behind other municipalities in non-incinerator diversion, particularly with respect to biosolids and food waste. While other municipalities began biosolids programs in the 1970s and 1980s, the ENV did not establish a biosolids program for Honolulu until 2006. Ex. K189 at 1 (Los Angeles biosolids webpage); Ex. K190 at 2 (King County biosolids webpage); Ex. K148 at 10 (Parametrix alternatives memorandum); 3/7/12 Tr. at 139:11–140:4 (Miller). The current program is extremely limited. *See* Ex. K148 at 7–9 (Parametrix alternatives memorandum). Further, the ENV currently has no food waste collection program. Ex. K195 at 2, 4 (12/09 food waste article); Ex. K148 at 4 (Parametrix alternatives memorandum).

Second, the finding relies “Tr. 1/25/12, 4:14.” Page four of the January 25, 2012 transcript is the index page. It contains no testimony. The citation to “Tr. 4/11/12, 117:13-25” contains a misstatement of Mr. Miller’s testimony by the ENV’s counsel. The statement by counsel is not evidence.

E. Compliance with Conditions

Finding of Fact 63 states, “The City has complied with conditions imposed by the 2009 LUC Order.” The finding is false. Most obviously, the ENV has stated that it cannot comply with Condition 14. Steinberger Written Direct Testimony at 16 (¶ 43), 24 (¶ 74). In addition, the ENV has not complied with Condition 4 in the Land Use Commission’s 2009 order, which required the ENV to exercise “reasonable

diligence” in identifying and developing one or more new landfill sites that shall either replace or supplement the WGSL. Ex. K15 at 6 (10/22/09 LUC order). Finally, Commissioner Dawson has expressed frustration that “there has been no report from this site selection committee. We’ve asked and asked for it and have gotten very vague answers, but no clear ones.” 3/7/12 Tr. at 190:20–23 (Dawson).

Finding of Fact 64 states in part, “[T]he City allotted funds in the Fiscal Year 2010 budget to conduct a site selection study for a secondary landfill on O’ahu in satisfaction of Condition No. 1 [of the 2009 Planning Commission Decision].” The finding is misleading. Condition 1 states in part, “On or before November 1, 2010, the Applicant shall begin to identify and develop one or more new landfill sites that shall either replace or supplement the WGSL. The Applicant’s effort to identify and develop such sites shall be performed with reasonable diligence” Ex. A18 at 25 (¶ 1). There is no evidence that the ENV’s obligation to begin to “identify” one or more new landfill sites was met by “appropriating funds to identify” one or more landfill sites. The site identification process began in January 2011 when the ENV’s site selection committee first met. 4/4/12 Tr. at 54:14–16 (Marsters). Accordingly, the ENV failed to meet the November 1, 2010 deadline in Condition 1 of the Planning Commission’s 2009 order.

Finding of Fact 66 states in part that the landfill site selection committee (“SSC”) was tasked with making “recommendations concerning the selection of a future site for a landfill to replace or supplement WGSL by accepting MSW, ash and residue from facilities such as HPOWER, and construction and demolition debris

waste (C&D) for the Island of O‘ahu.” This finding is partially false. While the ENV could have developed a supplemental site, the ENV preferred to have one replacement site that can accept all forms of waste. 4/4/12 Tr. at 72:13–24 (Marsters); Ex. K27 at 2 (1/20/11 SSC group memory). For this reason, the ENV directed that “the role of the [SSC] or the purpose of the [SSC] is to come up with a list of sites that could be used as a landfill to replace Waimanalo Gulch.” 4/4/12 Tr. at 35:1–4 (Marsters). The directive to find one site made the site selection process more difficult, because the SSC had to evaluate the added capacity needed for the ash and residue and the location of potential sites relative to H-POWER. 4/4/12 Tr. at 72:25–73:4, 111:17–25 (Marsters); 1/11/12 Tr. at 61:13–18 (Steinberger). Having chosen to find a replacement site for the Landfill, once the new site opens, the ENV will no longer need the Landfill.

Findings of Fact 69–76 materially misstate the site selection efforts. First, the findings only discuss the SSC’s activities through the seventh meeting in November 2011. Later meetings occurred on February 1, 2012, March 16, 2012, and April 20, 2012. Ex. K170 (2/1/12 SSC group memory); Ex. K215 (3/16/12 SSC agenda); Ex. K256 (4/20/12 SSC agenda). To assess Finding of Fact’s 76’s claim of “reasonable diligence” in identifying and developing a new site, subsequent meetings must be considered. *See* Ex. K15 at 6 (10/22/09 LUC order).

Second, the ENV’s consultant repeatedly applied screens to exclude potential sites that were not “previously discussed or authorized” by the SSC. 4/4/12 Tr. at 105:1–4 (Marsters).

Finally, SSC member Janice Marsters testified that the SSC was “not happy” with the process. 4/4/12 Tr. at 104:20–23 (Marsters: “[W]e weren’t happy with the process that had happened. . . . We just wanted to get the process right.”).

Finding of Fact 69 states, “To date, the Landfill Advisory Committee has held meetings on January 20, February 10, March 10 and 31, May 12, June 19, July 21, 2011, March 16, 2012, and April 20, 2012.” The finding is partially false. First, there is no evidence that an SSC meeting was held on June 19, 2011. Second, there is no evidence that an SSC meeting was held on July 21, 2011. Third, a meeting was held on July 19, 2011. Ex. K218 (7/19/11 SSC group memory). Finally, SSC meetings were also held on November 8, 2011 and February 1, 2012. Ex. K152 (11/8/11 SSC group memory); Ex. K170 (2/1/12 SSC group memory).

Finding of Fact 71 states that the SSC “began by working with potential sites identified by the City in previous studies.” The finding is misleading. The ENV’s consultant directed the SSC to start with the old list of approximately 40 sites, some of which were no longer viable options. 4/4/12 Tr. at 39:13–20, 77:25–78:20 (Marsters).

Finding of Fact 72 states in part, “The Committee also developed exclusionary criteria or factors for sites above the no-pass or UIC line based on the following information: . . . Land Ownership (Federal, State, City, and Private) . . .” This finding is false. The ENV’s consultant developed the exclusionary criteria or factors. In many instances, the consultant imposed these exclusionary criteria or factors without prior discussion or authorization from the SSC. Because the consultant

unilaterally imposed exclusionary criteria, the SSC had to direct “the consultant [to] go back” and “[r]emove screens that [the SSC] had not either previously discussed or authorized.” 4/4/12 Tr. at 105:1–4 (Marsters). In the end, the SSC was “not happy” with the process. 4/4/12 Tr. at 104:20–23 (Marsters: “[W]e weren’t happy with the process that had happened. . . . We just wanted to get the process right.”).

Finding of Fact 76 states, “The City’s effort to identify and develop has been performed with reasonable diligence.” The finding is false.

First, as set forth in the objections to Finding of Fact 64, the ENV did not meet the November 1, 2010 deadline to begin to identify and develop one or more new landfill sites. Ex. K15 at 6 (¶ 4) (10/22/09 LUC order).

Second, the SSC does not include anyone from Ko Olina or Kapolei—two communities heavily affected by the Landfill. 2/8/12 Tr. at 23:14–20 (Williams); 4/4/12 Tr. at 139:3–12 (Timson).

Third, the site selection process has not followed the City’s Integrated Solid Waste Management Plan (“**Solid Waste Plan**”), which Director Steinberger referred to as the City’s “framework” for waste management. 1/11/12 Tr. at 26:21–27:1 (Steinberger); *see also* 3/7/12 Tr. at 25:2–20 (Miller); 4/4/12 Tr. at 73:9–13 (Marsters). Importantly, the SSC has not excluded sites west of Makakilo, even though the Solid Waste Plan specifically directs that the “site evaluations will preclude areas west of Makakilo” K144 at 11-4 (10/08 integrated solid waste management plan update); 4/4/12 Tr. at 76:3–6, 76:16–18, 76:19–21, 77:21–24

(Marsters). A number of the sites that the SSC may recommend are west of Makakilo. Ex. K258 (4/20/12 SSC meeting photographs).

Nor has the site selection process has not followed the detailed site selection procedures set out in the Solid Waste Plan. Ex. K144 at 11-5 (10/08 Integrated Solid Waste Management Plan Update). For instance, the ENV did not direct the SSC to consider mitigation factors and obtain input from potentially affected neighborhoods before developing rankings. 4/4/12 Tr. at 113:11–14, 116:10–21 (Marsters); Ex. K144 at 11-5 (10/08 Integrated Solid Waste Management Plan Update); Ex. K147 at 3 (Parametrix site selection memorandum).

Fourth, as Mr. Miller explained, the site selection process has significant other errors, such as the improper use of deciles and the fail to correct implicit weighting, which has led to double counting of criteria. Ex. K147 at 3–4 (Parametrix site selection memorandum); 3/7/12 Tr. at 94:9–12 (Miller).

Fifth, the site selection process did not move linearly from a broad consideration of sites to a narrow list of sites. 3/7/12 Tr. at 23:8–13, 24:2–23 (Miller); Ex. K147 at 4 (Parametrix site selection memorandum). Instead, the consultant directed the SSC to start with the narrow list of old sites, some of which were no longer viable options. 4/4/12 Tr. at 39:13–20, 77:25–78:20 (Marsters). The SSC was using this old list of sites through the sixth of seven scheduled meetings. Ex. K26 at 2 (1/20/11 SSC description of service); 4/4/12 Tr. at 66:25–67:2, 83:1–4, 84:17–20 (Marsters). As discussed above in the objection to Findings of Fact 69–76, the SSC had to repeatedly “[r]emove screens that [it] had not either previously discussed or

authorized.” 4/4/12 Tr. at 104:24–105:4 (Marsters). The SSC broadened the search criteria or removed screens during the sixth, seventh, eighth, and ninth meetings.

Finally, the site selection process has already taken too long. The ENV was ordered to begin site selection efforts by November 1, 2010. Ex. K15 at 6 (¶ 4) (10/22/09 LUC order). It is now May 14, 2012. Nearly twenty months after the site selection process was supposed to begin, the ENV has still not selected a site.

Findings of Fact 77 states, “Even after [the] Committee has made its recommendation, the ENV will need more than **seven years** to complete the tasks necessary to start operations at a new site(s).” (Emphasis added.) For the reasons set forth above in the objection to Finding of Fact 60, this finding is false.

F. Waste Diversion

Finding of Fact 80 is identical to the Finding of Fact 53. For the reasons set forth above in the objection to Finding of Fact 53, Finding of Fact 80 is misleading and materially incomplete.

Finding of Fact 81 states, “However, there still are no new technologies with proven reliability and performance that would completely eliminate the need for a landfill.” This finding is materially incomplete. While the need for a Landfill may not be “completely eliminate[d],” H-POWER’s third boiler there will provide sufficient capacity to accept all of the waste that presently goes to the Landfill. 4/11/12 Tr. at 84:22–24 (Steinberger); Ex. A26 (Oahu waste stream table). The wastes that cannot be accepted because of its unique characteristics will “probably [be] a small percentage” of the MSW. 1/11/12 Tr. at 77:7–13 (Steinberger).

Finding of Fact 84 states, “The third boiler is scheduled to begin operations in January 2013.” This finding is false. At the April 11, 2012 hearing, Director Steinberger admitted that H-POWER’s third boiler will be operational by October or November 2012. 4/11/12 Tr. at 176:7–10, 211:12–15 (Steinberger).

Finding of Fact 85 states in part, “DOH requires as a condition of HPOWER’s permit that HPOWER have a disposal alternative—the Landfill—as a contingency for routine maintenance, natural disasters, and emergencies.” This finding is false. The actual condition provides that H-POWER must have a place to divert waste in the event that it runs out of storage capacity. *See* 4/11/12 Tr. at 110:24–111:24 (Steinberger: “A. Well, they don’t have a lot of room to store it at H-POWER. The Department of Health is rather restrictive as to how much they will allow you to store. . . . Q. Currently, the Department of Health does not permit -- or through the permit allow for H-POWER to store any large amount of solid waste? A. No. They're only allowed to store what they can hold on the tipping floor, and typically, the tipping floor can hold up to three days of MSW.”); Steinberger Written Direct Testimony at 30 (¶ 89) (“Further, the expanded HPOWER facility will still require the continued availability of WGSL as a permit condition to operate, to ensure proper disposal of MSW that is diverted from HPOWER due to routine maintenance, unanticipated closures or if the amount of waste exceeds the capacity of the facility.”).

Finding of Fact 90 states, “It is unlikely that [the green waste] capture rate can get any higher.” This finding is false. The ENV does not prohibit green waste

disposal at the Landfill. 4/11/12 Tr. at 114:14–18 (Steinberger: acknowledging that small amounts of green waste are accepted at the Landfill). If the ENV were to prohibit any green waste disposal at the Landfill, the capture rate for green waste would obviously be higher.

Finding of Fact 91 states, “All but incidental food waste . . . is diverted from WGSL.” This finding is false. The ENV currently has no residential food waste collection program. Ex. K195 at 2, 4 (12/09 food waste article); Ex. K148 at 4 (Parametrix alternatives memorandum). Food waste is landfilled at the WGSL, particularly when H-POWER is at capacity or down. 4/11/12 Tr. at 123:20–24 (Steinberger).

Finding of Fact 91 also states in part that “green waste is one of the few recyclable materials that is all reused on the Island.” This finding is misleading and unsupported by the record. Only 77% the green waste is recycled. Steinberger Written Direct Testimony at 19 (§ 56). There is no evidence regarding whether the green waste is recycled on O’ahu or elsewhere.

Finding of Fact 107 states in part that “15,000 to 20,000 tons per year of sewage sludge is still being landfilled, and as of July 31, 2011, there is nowhere else to dispose of that sewage sludge.” This finding is partially misleading. It is true that 15,000 to 20,000 tons per year of sewage sludge is still being landfilled. By October or November 2012, H-POWER’s third boiler will be able to accept all of that sewage sludge. 4/11/12 Tr. at 90:3–21, 174:1–6, 176:7–10, 211:12–15 (Steinberger); Steinberger Written Direct Testimony at 23 (§ 71).

G. Landfill Design and Operations

Finding of Fact 113 states that when the Landfill was hit by heavy rains in December 2010 and January 2011 and Cell E6 was flooded, Waste Management “was in the process of completing construction of the Western Surface Drainage System that was intended to divert stormwater around the Landfill.” This finding is misleading and materially incomplete.

First, the drainage system was designed to be in place before Cell E6 was filled with waste. 4/11/12 Tr. at 66:7–9, 66:15–17 (Sharma); 4/11/12 Tr. at 74:10–15 (Steinberger). Indeed, the industry standard is to have necessary drainage systems completed before filling cells at a landfill. 3/7/12 Tr. at 39:25–40:4, 126:13–20, 128:14–129:13, 172:19–173:3 (Miller); 4/11/12 Tr. at 31:24–32:10 (Sharma).

Second, the ENV claims that the SUP for the construction of the diversion channel was delayed because of archaeological issues and that the Landfill was running out of capacity in the permitted cells. The supposed permitting and processing delays—a challenge to the Final Environmental Impact Statement for the Landfill expansion project and opposition in the SUP approval process—were foreseeable. 4/11/12 Tr. at 145:22–23 (Steinberger); 4/11/12 Tr. at 145:24–146:14, 149:3–5 (Steinberger); Ex. K2 (6/5/03 LUC order); Ex. K155 at 3 (¶¶ 5–8) (3/14/08 LUC order); Ex. K85 at 125:7–11, 128:2–5, 145:21–146:2 (3/27/03 Tr.: Doyle). Inadequate planning by the ENV and Waste Management caused the Landfill to run out of safely useable space before the diversion channel had been completed. 3/7/12 Tr. at 186:4–21 (Miller). This inadequate planning forced the ENV and Waste Management to deviate from the Landfill’s design plans and the industry standard and to

fill Cell E6 before the diversion channel was in place. 4/11/12 Tr. at 66:7–9, 66:15–17 (Sharma); 3/7/12 Tr. at 129:25–130:4 (Miller).

Finding of Fact 114 recites certain “contentions” and “assertions” supposedly made by Waste Management regarding the December 2010 and January 2011 floods. This finding is false and unsupported by the record.

First, no one from Waste Management testified before the Commission. There is no evidence of Waste Management’s “contentions” and “assertions.”

Second, the evidence conclusively showed that the supposed contentions and assertions of Waste Management are false. Waste Management only sent a few temporary workers out for one day to clean one area by the outfall. Waste Management gave these temporary workers 30 minutes of hazardous waste training and puncture-resistant gloves. Ex. K133a (1/14/11 KHON 2 video); 4/23/12 Tr. at 41:13–15 (Belluomini). After the one day, the workers never came back to assist with the cleanup, even though the waste continued to wash ashore in the area. Ex. K133b (1/14/11 KHON 2 video); 4/23/12 Tr. at 41:13–15 (Belluomini); 2/8/12 Tr. at 94:24–95:2 (Hospodar). The waste also continued to wash ashore at Ko Olina’s lagoons. Hospodar Written Direct Testimony at 7–11 (¶ 21). But Waste Management and the ENV did not provide any assistance in cleaning up Ko Olina’s lagoons. 2/8/12 Tr. at 85:22–86:8, 94:24–95:2 (Hospodar); 4/23/12 Tr. at 42:4–6 (Belluomini).

Finding of Fact 115 makes certain representations about Waste Management’s efforts to work with the EPA. The record does not support this finding. No one from

Waste Management testified before the Commission. No evidence was introduced regarding Waste Management's efforts to work with the EPA.

Finding of Fact 119 is false and materially incomplete. First, The DOH currently has a pending enforcement case against the Landfill based on the events surrounding the January 2011 flooding. 4/4/12 Tr. at 156:20–22 (Gill: “There is a pending enforcement case which I can’t speak to in any detail regarding the handling of storm water runoff from the landfill.”); 4/4/12 Tr. at 157:10–12 (Gill: “There is . . . , to be clear, potential enforcement action regarding the events around the flood event at the landfill.”).

Second, the EPA did not “allege” violations at the Landfill. The EPA “found” violations at the Landfill. 1/25/12 Tr. at 35:23–25 (Chang).

Third, while the continued availability of a landfill is necessary for a limited number of wastes, the landfill does need not be the WGSL. On the contrary, the ENV is compelled to develop a new landfill with reasonable diligence. Ex. K15 at 6 (10/22/09 LUC order). The ENV has not contested that condition.

Finally, there will be “other options available” for almost all waste when the third boiler at H-POWER is operational in October or November 2012. Steinberger Written Direct Testimony at 23 (¶ 71); 1/11/12 Tr. at 75:13–22 (Steinberger); 4/11/12 Tr. at 90:3–21, 163:12–16, 171:16–172:10, 174:1–6, 176:7–10, 196:20–24, 211:12–15 (Steinberger).

IV. OBJECTIONS TO THE ENV'S CONCLUSIONS OF LAW

Conclusion of Law 3 states in part that the ENV applied for modification of a condition imposed by the Land Use Commission “pursuant to Sections 2-18 and 2-49

of the RPC.” The conclusion is wrong. Section 2-18 concerns meetings of the Planning Commission. At the December 7, 2011 hearing, the ENV conceded that the reference to Section 2-18 was a “typo,” as the reference “should be to 2-38.” 12/7/11 Tr. at 11:9–13.

Furthermore, Section 2-38 is irrelevant. Section 2-38 concerns the Planning Commission’s rules governing special use permits. The section does not allow the Planning Commission to modify conditions imposed by the Land Use Commission.

Finally, Section 2-49 concerns the modification of conditions imposed by the Planning Commission. The section does not allow the Planning Commission to modify conditions that were imposed by the Land Use Commission. *See* Planning Commission Rules §§ 1-5(f), 2-49.

Conclusion of Law 4 states that the ENV has shown good cause to amend the SUP. The conclusion is wrong. By “amend,” the ENV means to delete Condition 14 and allow the continued use of the Landfill to capacity, subject to limitations that the ENV now concedes are appropriate. The evidence does not support Conclusion of Law 4.

As detailed in KOCA’s Proposed Findings, the ENV has not met its burden of showing good cause to keep the Landfill open until it reaches capacity. First, the ENV has not acted reasonably diligently in identifying and developing a new landfill. KOCA’s Proposed Findings at 45–50 (¶¶ 247–269), 54 (¶¶ 7–10). Second, the ENV is compelled to develop a new landfill with reasonable diligence. Ex. K15 at 6 (10/22/09 LUC order). The ENV has not contested this condition. Third, ENV claims

that it only wants to have one landfill. After the ENV develops a new landfill, it will not need the WGSL. KOCA's Proposed Findings at 50–51 (¶¶ 270–275), 54–55 (¶¶ 11–12). Finally, with the added capacity provided by the third H-POWER boiler, there is no need to have a general purpose MSW landfill on O'ahu. 3/7/12 Tr. at 22:24–23:7 (Miller). There are only certain items that will not be accepted at H-POWER, which the ENV admits are “probably a small percentage” of the MSW. 1/11/12 Tr. at 77:7–13 (Steinberger). After storing MSW collected from the entire island of O'ahu for the last 23 years and after relying on the ENV's broken promises of closure, there is no reason why the WGSL must or should be filled to capacity.

V. OBJECTIONS TO THE ENV'S DECISION AND ORDER

Condition 1 provides:

MSW, including sewage sludge under the control of the City, that can be disposed of other than by landfilling, shall be allowed at the WGSL up to January 1, 2014, provided HPOWER or other facility is capable of processing the MSW, including sewage sludge under the control of the City.

This condition is objectionable for several reasons. First, there is no reason to allow all forms of MSW to be accepted at the Landfill until January 1, 2014. Director Steinberger admitted the third boiler would be operational by October or November 2012. 4/11/12 Tr. at 84:22–24, 176:7–10, 211:12–15 (Steinberger). When the third boiler is operational, the ENV will have the capacity to divert nearly all of the MSW that presently goes to the Landfill, including all sewage sludge, medical waste, and food waste. Steinberger Written Direct Testimony at 23 (¶ 71); 4/11/12 Tr. at 90:3–21, 174:1–6 (Steinberger). These and other putrescible wastes decompose and create the greatest health and safety concerns for the community. Ending the acceptance

of putrescible waste will eliminate approximately 90% of the odor problems caused by the Landfill. 3/7/12 Tr. at 206:6–10 (Miller). The ENV offers no justification for forcing the community to bear the adverse effects of those wastes until 2014.

Second, Condition 1 is vague, ambiguous and misleading in its use of the words “including sewage sludge under the control of the City.” This language implies that sewage sludge not under the control of the City may not be subject to this condition. This is nonsense. The City owns the Landfill and, subject to the permits for the facility, has control over whether sewage sludge may be disposed at the Landfill. Ex. K12 at 9 (¶ 41) (8/4/09 HPC order). If the ENV bans the disposal of sewage sludge at the Landfill, all generators (including private generators) of sewage sludge will have to look to H-POWER’s third boiler and other disposal options.

Finally, Condition 1 is vague and ambiguous in its use of the words “that can be disposed of other than by landfilling” and “provided HPOWER or other facility is capable of processing the MSW.” The record establishes the kinds of waste that can and cannot be disposed of at H-POWER. With the third boiler, H-POWER will be able to accept, among other waste, all sewage sludge, medical waste and food waste that currently go to the Landfill. It should not be up to the ENV to pick and choose the waste that it will send to H-POWER. KOCA’s Findings correctly identify the wastes that must be diverted to H-POWER and provide appropriate exceptions for H-POWER downtime and emergency contingencies. KOCA’s Findings at 56–57 (¶ 2).

Condition 2 provides

During periods of HPOWER scheduled maintenance when the facility may shut down one or more of its boilers, MSW, including sewage sludge, that would otherwise be processed at HPOWER or other facilities may be disposed of at WGSL.

This condition is inadequate. As proposed by Condition 2, MSW may be accepted at the Landfill any time one or more of the boilers is shut down for scheduled maintenance. During scheduled downtime, the storage capacity at H-POWER should be utilized before the Landfill is allowed to accept such “bypass” waste. 3/7/12 Tr. at 100:10–12 (Miller). KOCA’s proposed condition accounts for this issue of necessity by allowing general MSW to be accepted at the Landfill after January 1, 2013, “if H-POWER is not in operation such that it cannot accept waste.” KOCA’s Findings at 57 (¶ 2).

Condition 3 provides:

Under emergency circumstances, as reasonably determined by the Director of the Department of Environmental Services, MSW, including sewage sludge, that would otherwise be processed at HPOWER or other facilities may be disposed of at WGSL.

This condition offers no consistent standard for when an “emergency” may be determined. Instead, the ENV Director is given unfettered discretion. By contrast, KOCA’s proposed condition provides a legal and verifiable standard for when an “emergency” occurs, allowing “waste reasonably related to [an] emergency” to be disposed at the Landfill “if there is an emergency declared by the Governor of the State of Hawai‘i pursuant to law, including but not limited to HRS ch. 128.”

VI. CONCLUSION

In light of the foregoing, ENV's Proposed Findings should be rejected, except as noted above in Section II, and KOCA's Proposed Findings should be adopted.

DATED: Honolulu, Hawai'i, May 14, 2012.

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BEFORE THE PLANNING COMMISSION
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAI'I

In the Matter of the Application of

DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU

To delete Condition No. 14 of Special
Use Permit No. 2008/SUP-2 (also
referred to as Land Use Commission
Docket No. SP09-403) which states as
follows:

“14. Municipal solid waste shall be
allowed at the WGSL up to July 31,
2012, provided that only ash and residue
from H-POWER shall be allowed at the
WGSL after July 31, 2012.”

FILE NO. 2008/SUP-2

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned certifies that on this day a copy of the foregoing document was
duly served on the following persons:

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